

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Sustainable Housing and Communities

WASHINGTON, DC 20410-0050

Program Policy Guidance OSHC 2013-02

Date: March 4, 2013

Subject: Documentation to Submit for Environmental Clearance Before Purchasing

Real Property with Grant or Leverage Funds

Status: Current

Applicability: All OSHC Grantees

Related Guidance: Replaces Policy Guidance 2011-05

Comments:

Dear Sustainable Communities Regional or Community Challenge Grantee:

This guidance document describes the documentation grantees must submit for environmental clearance before purchasing property with grant or leverage funds. Before HUD approval of the property, grantees may not undertake any activities on the proposed property that have a physical impact or limit the choice of alternatives (such as executing a legally binding agreement to purchase the property). Any such activities on or regarding the property before approval will prohibit the grantee from spending any grant or leverage funds on the property in the future.

It is permissible for a grantee to enter into an "option agreement' with the seller of a property prior to environmental clearance. Execution of an option agreement signifies the seller's willingness to remove the property from the market for an agreed period of time, and the agreement *must* stipulate that the grantee's willingness to proceed with acquisition of the property is subject to a determination by the grantee on the desirability of the property for the project as the result of the completion of the environmental review. The finding of the review must show the property is desirable for its intended use by the grantee. The cost of the option must only be a nominal amount of the purchase price.

Information to Submit

Grantees need to provide the following information before HUD can approve the purchase of real property with grant or leverage funds:

1. Property Name and Location.

2. Description of the Property and Existing Conditions and Trends. Include the current use of the property, the current condition of the property, its surroundings, and trends in the surrounding area likely to continue if the proposed project is not implemented. In describing the current condition of the property please make note of factors such as whether the land is

developed, where there has been previous significant ground disturbance, and if any brownfields are involved.

- **3. Estimated Total Cost of Project.** Please provide a rough estimate of the total cost of the project. At a minimum, include the amount of grant funds and the cost of the activities associated with acquisition. Also, provide the amount of any additional funding for the project, to the extent known.
- **4. Project Description and Subsequent Use.** Describe what the project entails. Towards what is the funding going? What is envisioned for the project? What actions does the project involve? If a physical activity is involved, please provide a physical description of the project including what will be built (location, size, depth, etc.). Include, to the extent known, all actions within the entire project scope, including any known reuse. The entire project, including the reuse will be considered in the environmental review. Factors that indicate that the future site reuse can reasonably be considered to be known include the following:
- (a) Private, Federal, state, or local funding for the site reuse has been committed;
- **(b)** A grant application involving the site has been filed with the Federal government or a state or local unit of government;
- (c) The Federal government or a state or unit of local government has made a commitment to take an action, including a physical action, that will facilitate a particular reuse of the site;
- (d) Architectural, engineering, or design plans or other planning documents for the reuse exist that go beyond preliminary stages;
- (e) The proposed reuse of the property is part of a design, plan, or strategy, along with other projects or activities, that accomplishes a single goal.

If any of the above is true, please explain or describe and provide the relevant documentation for review. In addition, please explain if (a) other projects or activities are necessary for implementing the proposed reuse of the property, (b) completion of the reuse will result in redevelopment of or have significant impacts upon other areas, or (c) the reuse is linked to other actions.

- **5. Statement of Purpose and Need.** [40 CFR 1502.13] The underlying purpose and need to which the grantee is responding in proposing the proposed action and its alternatives. Describe how the proposed action is intended to address housing and/or community development needs.
- **6. Direct and Indirect Effects of Purchase.** Direct effects are those caused by the purchase and subsequent use, and occur at the same time and place. Indirect effects are those caused by the purchase and subsequent use, and are later in time or farther in distance, but still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- **7. Analysis of Cumulative Impacts.** The impact on the environment which results from the incremental impact of the purchase when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person

undertakes such other actions. Cumulative impacts result from individually minor but collectively significant actions taking place over time.

8. Alternatives to the Proposed Purchase.

- a. *Alternatives and Project Modifications Considered*. Identify other reasonable actions considered and not selected, such as another site, design modifications, or another use of the site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.
- b. *No Action Alternative*. Discuss the benefits and adverse impacts to the human environment of not purchasing the proposed property.
- c. *Recommended Mitigation Measures*. Recommended feasible ways in which the proposal should be modified to minimize adverse environmental impacts and restore or enhance environmental quality.

9. Any Additional Studies Performed.

In addition, the grantee must submit documentation that the project complies with the following authorities:

10. Coastal Zone Management (Coastal Zone Management Act, § 307(c)&(d)).

Federal assistance to grantees for activities affecting any coastal use or resource is granted only when such activities are consistent with federally approved state Coastal Zone Management Act plans. The grantee should provide one of the following types of documentation:

- a. A general location map or statement establishing there are no coastal zone management areas in the community or state;
- b. A map or a statement from the local planning department or state coastal commission or district as evidence the project is not in a coastal zone management area; or
- c. A "Federal Consistency Determination" from the state coastal commission or district.

11. Coastal Barrier Resources System (Coastal Barrier Resources Act 16 USC 3501)

HUD funds cannot be used for activities proposed in the Coastal Barrier Resource System. Grantees must verify their projects are not located in an area that is part of the Coastal Barrier Resources System and must provide one of the following types of documentation:

- a. The grantee states that its program operates in an area or community that does not contain any shores along the Atlantic Ocean, Gulf of Mexico, or the Great Lakes or
- b. The grantee provides HUD with a finding made by a qualified source based upon the official maps issued by the U.S. Fish and Wildlife Service (FWS) or the flood insurance rate maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) stating that the grantee's proposed property or project is not located within designated coastal barrier resources. The grantee must cite the map panel number.
- **12. Floodplain Management** (24 CFR Part 55, E.O. 11988) The grantee should provide one of the following types of documentation:
- a. Evidence showing that the proposed action is not within a special flood hazard area mapped by FEMA. The project location must be indicated on an official FEMA map;

b. If the proposed action is within a special flood hazard area mapped by FEMA, but the decision making process does not apply because of an exception, documentation that the decision making (8-step) process is not applicable (see 24 CFR 55.12 (b) or (c)).

c. If the proposed action is within a special flood hazard area mapped by FEMA, and the decision making process applies, HUD will have to perform this process, which involves two public comment periods. Please work with HUD early on to avoid delays.

13. Historic Preservation (36 CFR Part 800).

Federal law and regulations require that projects receiving federal financial assistance, permit or license undergo a review to assess the impact of the project on historic properties. Known as Section 106 review, the process is a collaborative consultation that aims to avoid, minimize, or mitigate possible adverse effects to historic properties (historic buildings, districts, archeological sites, and/or historic properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations). The consulting parties in the review include the grantee and State Historic Preservation Officers (SHPOs), and may also include Tribal Historic Preservation Officers (THPOs) and tribal leaders, local governments, historical groups, other parties with demonstrated interest, the general public, and the federal Advisory Council on Historic Preservation. HUD delegates the responsibility to conduct the Section 106 review to grantees, with the exception of tribal consultation. Under a few circumstances, outlined in the delegation memo, HUD reenters the consultation process, including when a project will have an adverse effect on historic properties. A grantee may hire a qualified preservation professional to help plan a project and/or conduct the Section 106 review.

The Section 106 process consists of four steps: 1) Initiate consultation; 2) Identify and evaluate historic properties; 3) Assess effects; and, 4) Resolve adverse effects. The Section 106 process is described at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/atec. At each stage, the grantee makes a finding and seeks concurrence from consulting parties. The grantee should build consultation timeframes (which may stretch to many months in a project with adverse effects) into the project schedule. And if archeological properties are anticipated, the grantee may need to conduct an archeological survey.

If a project involves new construction or other ground disturbance, or potential impacts to cultural properties of significance to Indian tribes, consultation with Indian tribes is required. HUD will initiate consultation with tribes based on information provided by the grantee, and it may take months to complete. Grantee should provide HUD with information on previous ground disturbance and known archeological sites (obtained from SHPO and/or local sources.) If a project will occur on or affect lands owned by federally-recognized Indian tribes, consult with HUD environmental staff for additional guidance.

The Section 106 process results in one of three possible findings and the grantee should provide the relevant type of documentation as outlined below.

a. "No Historic Properties Affected." A letter from the State Historic Preservation Officer (SHPO) that concurs with the grantee's finding that there are "no historic properties affected"

based on the grantee's description of the project and the Area of Potential Effect (APE), steps taken to identify historic properties, and the basis for determining that no historic properties are present or affected. If the SHPO has not responded to the grantee request for concurrence within 30 days, document the date the SHPO received the request;

- b. "No Adverse Effect." A letter from the SHPO that concurs with the grantee's finding of "no adverse effect on historic properties," based on the documentation in (a), as well as the project's effects on historic properties, why the adverse effect criteria were not applicable, and copies or summaries of any views provided by consulting parties and the public;
- c. "Adverse Effect." A letter from the SHPO that concurs with a finding of "adverse effect," based on the grantee's description provided in the documentation described in (a) and (b). If the grantee determines that a Memorandum of Agreement (MOA) must be executed by HUD and consulting parties to resolve adverse effects, provide a draft copy of the MOA to HUD with the documentation leading to that conclusion and evidence of consultation and consult further with HUD to finalize the MOA.

Any time there is disagreement among the consulting parties in the Section 106 process, the grantee shall seek assistance from HUD environmental staff and provide them with the reasons for the disagreement(s), including all of the information the grantee sent to the SHPO.

- **14. Noise Abatement** (24 CFR Part 51 Subpart B). The grantee should provide one of the following types of documentation:
- a. Documentation that the project is not within 1,000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of a military or FAA-regulated civil airfield;
- b. If the project is new construction or rehabilitation within the distances in (a),
 - noise assessment showing the noise level is "Acceptable" (at or below 65 DNL), including data sources and calculations;
 - if within the distances in (a) and the noise level is "Normally Unacceptable," a noise assessment with mitigation calculations;
- c. Documentation that the project is within the distances in (a) but is an existing structure or structures with no planned rehabilitation;
- d. If the project is rehabilitation within the distances in (a) and the noise level is "Unacceptable," documentation that converting the property to a non-residential use compatible with high noise levels was considered.
- e. If the project is new construction within the distances in (a) and the noise level is "Unacceptable," an Environmental Impact Statement (EIS) must be written by HUD. The grantee shall provide all data, documentation, and any necessary studies to complete the EIS. The anticipated timeline for completion of an EIS is 18 months.

(Note: a waiver of the EIS may be granted at the discretion of the Assistant Secretary for Community Planning and Development if there are no outdoor, noise-sensitive uses and no other environmental issues. The grantee shall provide sufficient documentation to prove the waiver criteria have been met. The structure must provide sufficient attenuation to achieve the interior goal of 45 dB. The anticipated timeline for an EIS waiver is 3 months.)

- **15. Hazardous Operations** (24 CFR Part 51 Subpart C). The grantee should provide one of the following types of documentation:
- a. Documentation from local authorities and/or aerial photos that show no stationary aboveground storage tanks containing flammables or combustibles are within one mile of the project; or
- b. If tanks are within one mile, and project does not meet the Acceptable Separation Distance in accordance with the regulations standards, documentation should include that there is an effective barrier (natural or man-made), the calculations that support (if that is the case) an acceptable separation distance, using HUD calculation methodology (using the procedures set forth in the Regulation or in the ASD Guidebook), for people and buildings, or a detailed description of the mitigation design to protect people and buildings; or
- c. A statement that the project does not involve rehabilitation/modernization or new construction, or involves only rehab that will not result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable.
- **16. Airport Hazards** (24 CFR Part 51 Subpart D). It is HUD policy to apply standards to prevent incompatible development around civil airports and military airfields. Projects within 15,000 feet of a military airport or 2,500 feet of a civilian airport should be evaluated for the potential for airport hazards. Special restrictions apply to projects located within Runway Protection Zones/Clear Zones (RPZ/CZ), areas immediately beyond the ends of runways as defined by FAA regulations, and Accident Potential Zones (APZ), areas at military airfields beyond the Clear Zones as defined by Department of Defense. The grantee should provide the following documentation:
- a. A map showing the site is not within 15,000 feet of a military airport or within 2,500 feet of a civilian airport;
- b. If within 15,000 feet of a military airport, a map showing the site is not within a designated APZ or a letter from the airport operator stating so;
- c. If within 2,500 feet of a civilian airport, a map showing the site is not within a designated RPZ/CZ or a letter from the airport operator stating so;
- d. If the site is in a designated APZ, documentation of consistency with DOD Land Use Compatibility Guidelines; or
- e. If the site is in a designated RPZ/CZ, a signed copy of Notice to Prospective Buyers. HUD assistance may <u>NOT</u> be used at this location if project involves substantial rehabilitation or activities that would significantly prolong the physical or economic life of existing facilities that will be frequently used or occupied by people. HUD assistance may be used for existing properties proposed for acquisition or lease with or without minor rehabilitation or repair. Written notice must be provided to prospective buyers to inform them of potential hazards. (See <u>Sample Notice to Prospective Buyers</u>.)
- **17. Protection of Wetlands** (E.O. 11990). New construction in wetlands will not be approved. The grantee should provide one of the following types of documentation:
- a. Evidence the project does not include new construction or expanding the footprint of an existing building or other improvements such as a parking lot; or

- b. Evidence any new construction will not occur in a designated wetland or expand the footprint of a building or other improvements into a wetland or result in adverse impacts to a wetland (e.g. grading that drains the wetland or directs contaminated runoff toward the wetland).
- **18. Toxic Chemicals & Radioactive Materials** (24 CFR 50.3(i)). The grantee must provide: a. A Phase I ESA, prepared in accordance with the ASTM Standard E 1527–05, as amended. b. If the Phase I ESA concludes that recognized environmental conditions are present, a detailed Phase II ESA by an appropriate professional. If the Phase II ESA reveals site contamination, the grantee should contact HUD for further discussion and guidance.
- **19. Other § 50.4 authorities** (e.g., endangered species, sole source aquifers, farmlands protection, wild and scenic rivers, environmental justice).
- a. **Endangered Species**: A list of threatened and endangered species in the project area, an explanation of the project's potential effects on listed species, if any, and a recommendation as to the project's effects on listed species: No Effect, Not Likely to Adversely Affect, or Likely to Adversely Affect. (*Note: If consultation with the U.S. Fish and Wildlife Service is required, it must be done by HUD, and it could lengthen the time it takes for HUD to complete the environmental review.*)
- **b. Sole Source Aquifers (SSA)** (Sole Source Aquifers 40 CFR Part 149): Aquifers are underground geological formations that yield a significant amount of water to a well or spring used for drinking water. The U.S. Environmental Protection Agency (EPA) defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. The grantee should provide one of the following types of documentation:
 - i. A copy of the EPA "Designated Sole Source Aquifer" map showing the project is not within the boundaries of an SSA;
 - ii. Documentation from EPA that the project is not a regulated activity within the boundaries of an SSA; or
- iii. Documentation that EPA has reviewed and commented on the proposed action within an SSA.
- c. **Wild and Scenic Rivers:** Evidence the project is not within one mile of a designated Wild, Scenic, or Recreational river, or documentation that the grantee made contact with the Federal or state agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is not inconsistent with the management and land use plan for the designated river area.
- d. **Farmland Protection**: Evidence that the proposed site is already in or committed to urban development, evidence that the proposed site is not "Important Farmland" regulated under the Farmland Protection Policy Act, or <u>Form AD-1006</u>, "Farmland Conversion Impact Rating." Complete Parts I, III, VI, and VII of form AD-1006. The Natural Resources Conservation Service (NRCS) will complete Parts II, IV, and V of the form. Part VII combined scores from sections I, II and III that are over 160 points require the evaluation of

at least one alternative project site. NRCS has 45 days to make a determination. NRCS will return form AD-1006 to you.

- e. **Environmental Justice** (E.O. 12898). The grantee must provide one of the following:
 - i. Evidence the project will not create an adverse environmental impact or aggravate an existing impact;
 - ii. If the project creates an adverse impact, evidence that the project is not in an Environmental Justice (EJ) Community of Concern, meaning
 - The median income of the neighborhood exceeds 60 percent of the Area Median Income, AND
 - The residents of the neighborhood do not consist of minorities in an appreciably higher percentage than the minority population of the jurisdiction as a whole;
- iii. If the project has an adverse impact and is in a Community of Concern, evidence that the project does not disproportionately affect the minority or low-income residents; or
- iv. If the finding is that the project site is in a Community of Concern and that there will be a disproportionate, adverse impact on the residents, documentation on how the adverse impact will be eliminated or that the project will be moved to a site that will not raise environmental justice concerns;
- **20.** In addition, the proposed property and its use must align with the plan developed or being developed in the Regional Planning or Community Challenge planning process. The grantee must provide a letter stating that the proposed property and its use aligns with the plan.

Please note: In certain situations, a GTR or Environmental Officer will require additional documentation.